

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK (BROOKLYN)**

IN RE:

BRIAN H. DENKER-YOUNGS

CASE NO. 1-15-41069-cec

DEBTOR.

JUDGE CARLA E. CRAIG

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Discover Bank,

Plaintiff,

Adv. Proc. No.:

v.

Brian H. Denker-Youngs

Defendant.

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**COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT**

NOW COMES Discover Bank, by and through its attorney, Geoffrey Peters, of Weltman, Weinberg & Reis Co., L.P.A. and states as follows:

**Jurisdiction and Venue**

1. Defendant, Brian H. Denker-Youngs, is a debtor in the original voluntary Chapter 11 bankruptcy petition filed in this Court on March 13, 2015 which was converted to Chapter 7 bankruptcy on October 1, 2015.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, and 157.
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1408.
4. This matter is a Core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

### **Facts Common to all Counts**

5. Plaintiff, Discover Bank, issuer of the Discover credit card, offers revolving credit card accounts to individuals.
6. Defendant is an individual consumer and the holder of a credit card account with Plaintiff, account number ending in 9890.
7. Consumer customers agree to make monthly installment payments for purchases and cash advances plus pay applicable interest and fees under the credit card accounts.
8. The Defendant incurred the following charges and Plaintiff financed said charges through the above-mentioned revolving credit card account within the months of January, February and March 2015 before filing the bankruptcy petition. The following charges were made:

2/17/2015	CASH ADVANCE FEE	10.00
2/17/2015	*HUNTINGTON HUNTINGTON NY	163.00
2/26/2015	BALANCE TRANSFER CHECK 0301 USA	2,000.00
2/26/2015	BAL TRANS FEE	60.00
3/10/2015	BALANCE TRANSFER CHECK 0303 USA	450.00
3/16/2015	BALANCE TRANSFER CHECK 0300 USA	500.00
3/16/2015	BAL TRANS FEE	15.00
1/3/2015	FEDEX OFFIC00021592069 SYOSSET NY	192.27
1/7/2015	GEICO *AUTO MACON DC	235.17
1/7/2015	GEICO *AUTO MACON DC	116.80
1/10/2015	UBER 8665761039 CA	21.43
1/11/2015	USPS 35405521902713418 HUNTINGTON NY	4.90
1/11/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	24.30
1/11/2015	SEAMLESS 800-905-9322 NY	12.23
1/11/2015	HESS 32551 SYOSSET NY	24.00
1/13/2015	SEAMLESS 800-905-9322 NY	26.20
1/14/2015	SEAMLESS 800-905-9322 NY	18.88
1/15/2015	SEAMLESS 800-905-9322 NY	32.15
1/16/2015	SEAMLESS 800-905-9322 NY	23.78
1/17/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	19.13
1/17/2015	SEAMLESS 800-905-9322 NY	26.20
1/19/2015	SEAMLESS 800-905-9322 NY	23.95

1/19/2015	SEAMLESS 800-905-9322 NY	-23.95
1/21/2015	SEAMLESS 800-905-9322 NY	21.85
1/23/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	21.04
1/23/2015	SEAMLESS 800-905-9322 NY	14.68
1/24/2015	SEAMLESS 800-905-9322 NY	22.41
1/24/2015	SEAMLESS 800-905-9322 NY	13.92
1/25/2015	SEAMLESS 800-905-9322 NY	22.14
1/29/2015	SEAMLESS 800-905-9322 NY	14.68
1/29/2015	7-ELEVEN 26251 ELWOOD NY	11.79
1/30/2015	SEAMLESS 800-905-9322 NY	22.41
1/30/2015	RAISER & KENNIFF 5167427600 NY	1,500.00
1/31/2015	RUSSO BROTHERS AUTO COLL E NORTHPORT NY	500.00
2/2/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	10.00
2/5/2015	REWARD STATEMENT CREDIT	-6.36
2/6/2015	SEAMLESS 800-905-9322 NY	21.60
2/7/2015	SEAMLESS 800-905-9322 NY	15.61
2/8/2015	SEAMLESS 800-905-9322 NY	17.08
2/11/2015	SEAMLESS 800-905-9322 NY	25.06
2/12/2015	WALGREENS #4363 BROOKLYN NY	45.37
2/12/2015	UNION ISLAND CORP BROOKLYN NY	27.50
2/13/2015	WALGREENS #4363 BROOKLYN NY	37.03
2/14/2015	WATCH ZONE 3 GROUP INC HUNTINGTON STNY	23.42
2/14/2015	WALDBAUM'S #70236 HUNTINGTON NY	94.20
2/14/2015	STARBUCKS #07296 FRESH FRESH MEADOWSNY	28.25
2/15/2015	SEAMLESS 800-905-9322 NY	16.15
2/16/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	22.38
2/17/2015	SEAMLESS 800-905-9322 NY	19.96
2/19/2015	SEAMLESS 800-905-9322 NY	15.61
2/22/2015	RITE AID BROOKLYN NY	92.19
2/23/2015	STANLEY W. TOKAR, MD HUNTINGTON NY	20.00
2/23/2015	SEAMLESS 800-905-9322 NY	18.93
2/23/2015	LENTON CORP ROSLYN HTS NY	22.01
2/24/2015	VERIZON*ONETIMEPAY VERIZON.COM TX	160.85
2/25/2015	WALGREENS #4363 BROOKLYN NY	32.43
2/25/2015	SEAMLESS 800-905-9322 NY	18.06
2/25/2015	SEAMLESS 800-905-9322 NY	12.62
2/26/2015	REWARD STATEMENT CREDIT	-14.89
2/26/2015	MCDONALD'S F23533 BROOKLYN NY	6.29
2/26/2015	HESS 32337 GREAT NECK NY	30.00
2/26/2015	7-ELEVEN 26390 HUNTINGTON STNY	27.47
2/27/2015	LAW OFFC A A CAPETOLA WILLISTON PARNY	3,000.00

3/2/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	10.26
3/3/2015	RITE AID HUNTINGTON NY	71.12
3/4/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	10.15
3/4/2015	SEAMLESS 800-905-9322 NY	27.27
3/6/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	13.45
3/6/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	10.00
3/6/2015	SEAMLESS 800-905-9322 NY	30.44
3/12/2015	UBER TECHNOLOGIES INC 866-576-1039 CA	22.07
<b>TOTAL:</b>		<b>\$7,073.94</b>

9. The Defendant also incurred a balance transfer charge in the amount of \$4,000.00 on or about April 23, 2015 prior to converting the case from a Chapter 11 to a Chapter 7.

**Count I, Fraud; 11 U.S.C. § 523(a)(2)(A)**

10. Plaintiff adopts and incorporates by reference all the allegations contained in paragraphs 1-9.

11. Pursuant to 11 U.S.C. § 523(a)(2)(A), money, property, services, or an extension, renewal, or refinancing of credit are nondischargeable to the extent that they are obtained by false pretenses, a false representation, or actual fraud.

12. Defendant obtained money, property, and/or services through an extension of credit advanced by the Plaintiff on the open-ended credit agreement.

13. Defendant knowingly sought and obtained financing from Plaintiff with no intention to pay off the full balance of charges incurred as the credit was incurred very shortly prior to filing the bankruptcy.

14. Defendant knew, or should have known, at the time of the transaction that he could not afford to repay Plaintiff, and in fact, could not afford to repay Plaintiff.

15. Defendant incurred the charges in anticipation of filing this bankruptcy.

16. Defendant, as such, falsely represented ability and intent to repay Plaintiff, and Plaintiff reasonably relied upon such representations to its detriment.
17. The money, property, and/or services obtained by Defendant through the open-ended credit agreement and the credit advanced by the Plaintiff on the Account were obtained by Defendant's false representations, false pretenses, or actual fraud.
18. Plaintiff has been damaged by the Defendant's fraudulent conduct in the form of an unpaid balance due and owing on the account.
19. Additionally, the charges are presumed to be nondischargeable, pursuant to 11 U.S.C. 523 (a)(2)(C)(I) as to the luxury goods or services incurred, and pursuant to 11 U.S.C. 523 (a)(2)(C)(II) as to the cash advances.
20. As such, Defendant's debt to Plaintiff is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

**Count II, Money Judgment**

21. Plaintiff adopts and incorporates by reference all the allegations contained in paragraphs 1-20.
22. Upon a finding that the debt is nondischargeable, Plaintiff is entitled to a money judgment.

**WHEREFORE**, Discover Bank prays for the entry of an order as follows:

- A. For an order declaring that the debt owed to Plaintiff by Defendant as set forth in the Complaint is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A); and
- B. For a judgment in favor of Plaintiff and against Defendant in the principal amount of \$11,073.94, plus reasonable attorney fees associated with the prosecution of this matter, and costs; and
- C. For such other and further relief as this Court deems just.

Respectfully Submitted:

By: /s/Geoffrey J. Peters  
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